ONG ENG HOCK & ANOR v. ONG CHENG GUAN & ANOR

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
HASAN LAH FCJ
ZAHARAH IBRAHIM FCJ
BALIA YUSOF WAHI FCJ
JEFFREY TAN FCJ
[CIVIL APPEAL NO: 02(f)-104-11-2016(J)]
5 JUNE 2018

SUCCESSION: *Probate – Revocation of grant – Whether instrument was last will and testament of testator – Burden of proof – Will admitted to probate – Whether person who sought revocation must establish sufficient cause – Allegation of forgery – Whether forgery proven – Whether sufficient cause established – Whether probate could be revoked*

The appellants herein had been appointed as executors and were named as the sole beneficiaries in the will of the deceased. The appellants subsequently obtained grant of probate to the estate of the deceased. The first respondent commenced a suit against the appellants alleging that the will was a forgery. In the trial court, the main and core issue for determination was whether the signature of the deceased was genuine or forged. The trial court dismissed the first respondent's claim and remarked that the first respondent had the legal and evidential burden of proof and that the appellants had no evidential burden unless a *prima facie* case had been made out on the pleaded cause of action. On appeal, the finding of fact was not disturbed by the Court of Appeal ('CA'). However, the CA held that the trial court was wrong to impose the burden of proof on the first respondent to prove forgery when the appellants had not proved due execution of the will and reversed the decision of the trial court and revoked the probate. Hence, the appellants obtained leave to appeal on the following questions of law: (i) whether the probate rule that the burden of proving that the instrument so propounded was the last will and testament of the testator applied in a case where the impugned will had already been admitted into probate and a sealed grant of probate issued by the High Court; and (ii) where the challenge to the impugned will was on grounds of forgery and specifically that the executor had forged the will, whether the burden lay entirely on the challenger in proving forgery.

Held (allowing appeal with costs; restoring order of High Court)
Per Jeffrey Tan FCJ delivering the judgment of the court:

(1) In answering the first question, the court held that 'those who propound a will must show that the will of which probate is sought is the will of the testator ... and has to prove its due execution and valid execution and if there are any suspicious circumstances ... remove them from the

A mind of the court ...'. But where a will has been admitted to probate, the person who seeks revocation of the probate has to establish sufficient cause. In the instant case, forgery was pleaded as the sufficient cause. However, the trial court held that forgery was not established. The CA did not disturb the finding. Hence, sufficient cause was not established.
B In the circumstances, the CA could not revoke the probate. (para 21)

(2) In answering the second question, it was held that, where the will has been admitted to probate, the person who seeks revocation of the probate on the ground of forgery has the burden and initial onus to prove forgery. Where the will has not been admitted to probate, both
C propounder and challenger could not be absolutely freed from the burden and/or onus of proof. What was before the trial court was not an action for the grant of probate, but an action for revocation of the probate. Hence, the trial court was right in holding that the first respondent had the 'legal and evidential burden of proof', and that the
D appellants had no 'evidential burden' unless 'a *prima facie* case had been made out on the pleaded cause of action.' (paras 13, 20 & 21)

Bahasa Malaysia *Headnotes*

Perayu-perayu dilantik sebagai wasi dan dinamakan sebagai benefisiari-
E benefisiari tunggal dalam wasiat si mati. Perayu-perayu kemudian memperoleh sijil pengesahan wasiat bagi harta pusaka si mati. Responden pertama memulakan guaman terhadap perayu-perayu mendakwa bahawa wasiat tersebut dipalsukan. Di mahkamah bicara, isu utama dan penting untuk diputuskan adalah sama ada tandatangan si mati tulen atau dipalsukan.
F Mahkamah bicara menolak tuntutan responden pertama dan menyatakan bahawa beban pembuktian undang-undang dan keterangan adalah pada responden pertama dan bahawa perayu-perayu tiada beban membuktikan kecuali jika kes *prima facie* dibuktikan atas kausa tindakan yang diplid. Atas rayuan, dapatan fakta tidak diganggu oleh Mahkamah Rayuan ('MR'). Walau bagaimanapun, MR memutuskan bahawa mahkamah bicara khilaf apabila
G meletakkan beban pembuktian pada responden pertama untuk membuktikan pemalsuan apabila perayu-perayu tidak membuktikan penandatanganan wasiat dan mengakas keputusan mahkamah bicara dan membatalkan probet. Oleh itu, perayu-perayu memperoleh kebenaran merayu atas soalan undang-undang berikut: (i) sama ada kaedah probet bahawa beban pembuktian
H bahawa instrumen yang dikemukakan adalah wasiat terakhir pewasiat yang dipakai dalam kes di mana wasiat tersebut telah pun diterima dalam probet dan sijil pengesahan wasiat meterai dikeluarkan oleh Mahkamah Tinggi; dan (ii) di mana cabaran terhadap wasiat yang dipersoalkan adalah atas asas pemalsuan dan khususnya bahawa wasi telah memalsukan wasiat, sama ada
I beban keseluruhannya adalah atas pencabar dalam membuktikan pemalsuan.

Diputuskan (membenarkan rayuan dengan kos; mengembalikan perintah Mahkamah Tinggi)
Oleh Jeffrey Tan HMP menyampaikan penghakiman mahkamah:

(1) Dalam menjawab soalan pertama, mahkamah memutuskan bahawa 'sesiapa yang mengemukakan wasiat mesti menunjukkan bahawa wasiat di mana probet dipohon adalah wasiat oleh pewasiat ... dan perlu membuktikan penandatanganannya yang wajar dan penandatanganan yang sah dan jika terdapat hal keadaan yang mencurigakan ... menyingkirkannya daripada pertimbangan mahkamah ...'. Tetapi apabila wasiat telah diterima dalam probet, pihak yang memohon pembatalan probet perlu membuktikan sebab yang mencukupi. Dalam kes ini, pemalsuan dipohon sebagai sebab yang mencukupi. Walau bagaimanapun, mahkamah bicara memutuskan bahawa pemalsuan tidak dibuktikan. Mahkamah Rayuan tidak mengganggu dapatan tersebut. Oleh itu, sebab yang mencukupi tidak dibuktikan. Dalam keadaan tersebut, MR tidak boleh membatalkan probet.

(2) Menjawab soalan kedua, diputuskan bahawa, apabila wasiat diterima dalam probet, pihak yang memohon pembatalan probet atas alasan pemalsuan mempunyai beban awalan untuk membuktikan pemalsuan. Apabila wasiat tidak diterima dalam probet, pengemuka dan pencabar, kedua-duanya tidak boleh dilepaskan secara keseluruhan daripada beban pembuktian. Kes di hadapan mahkamah bicara bukan tindakan bagi sijil pengesahan wasiat, tetapi tindakan bagi pembatalan probet. Oleh itu, mahkamah bicara betul dalam memutuskan bahawa responden pertama mempunyai 'beban pembuktian dari segi undang-undang dan keterangan', dan bahawa perayu-perayu tiada 'beban keterangan' kecuali 'satu kes *prima facie* dibuktikan atas kausa tindakan yang diplidkan.'

Case(s) referred to:
Canagasaby v. Saravenamuttoo Vytilingam [1917] 2 FMSLR 185 ***(refd)***
Carlisle v. Wills [1963] VR 583 ***(refd)***
Fazil Rahman & Ors v. AR S Nachiappa Chettiar [1960] 1 LNS 26 HC ***(refd)***
In The Estate Of Syed Abdullah Abdulrahman Sahil, Deceased [1939] 1 LNS 34 HC ***(refd)***
Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***
Gardiner v. Hughes [2017] VSCA 167 ***(refd)***
Khaw Cheng Poon & Ors v. Khaw Cheng Bok & Ors And Another Appeal [2005] 3 CLJ 753 CA ***(refd)***
Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***
Ligar Fernandez v. Eric Claude Cooke [2002] 6 CLJ 152 HC ***(refd)***
Norman Raitman v. Re Watson [2017] VSC 322 ***(refd)***
Palaniyappan v. Ramanathan Chettiar [1976] 1 LNS 137 HC ***(refd)***
Re Khoo Boo Gong, Decd Khoo Teng Seong v. Teoh Chooi Ghim & Ors [1981] 1 LNS 78 FC ***(refd)***
Tan Khay Seng v. Tan Kay Choon & Anor [1988] 1 LNS 233 HC ***(refd)***

Legislation referred to:
Probate and Administration Act 1959, s. 34
Rules of Court 2012, O. 72 r. 13
Wills Act 1959, s. 5(1)

The Indian Succession Act 1925 [Ind], s. 263

Other source(s) referred to:
Mahinder Singh Sidhu, *The Law of Wills Probate Administration and Succession in Malaysia and Singapore,* p 219
Sarkar on Evidence, 14th edn, vol 2, p 1396
Williams, Mortimer and Sannucks on Executors, *Administrators and Probate,* 20th edn, p 40-02

For the appellants - Cyrus Das, Joshua Kevin, Azura Adnan & Savreena Kaur; M/s Kevin & Co
For the respondents - Rosli Kamaruddin, Muhammad Naufal Amran, Muhammad Fahmi Jamil & Khairulazwad Sariman; M/s Rosli Kamaruddin & Co

[Editor's note: For the Court of Appeal judgment, please see Ong Cheng Guan & Anor v. Ong Eng Hock & Anor And Another Appeal [2016] 1 LNS 944 (overruled) For the High Court judgment, please see [2013] 1 LNS 638 (affirmed).]

Reported by S Barathi

JUDGMENT

Jeffrey Tan FCJ:

[1] On 27 July 2017, we heard and unanimously allowed this appeal. We set aside the order of the Court of Appeal dated 19 February 2016 and restored the order of the trial court dated 7 January 2013. We now give our reasons.

[2] By will dated 18 February 2000, Ong Eng Bee (deceased) appointed her son (first appellant) and grandson (second appellant) as her executors and named the appellants as her sole beneficiaries. The deceased died on 7 March 2000. On 15 February 2002, the High Court at Muar granted probate to the estate of the deceased to the appellants.

[3] The first respondent, a grandson of the deceased from another son (PW5), alleged that the will was a forgery. In Johor Bahru High Court Civil Suit 22-765-2007 (probate action), the first respondent sought (i) a declaration that the will of the deceased was null and void, (ii) an order to set aside the probate granted to the appellants, and (iii) an order to set aside all transfers of assets pursuant to the will. In his statement of claim, the first respondent pleaded (i) that members of the family of the deceased, including the appellants, were summoned and then informed by one Tan Kiah Teck of Messrs Tan & Tan, Johor Bahru, who was the lawyer for the deceased whilst alive, that the deceased left no will, (ii) that the true signature of the deceased

was not the same as the purported signature of the deceased on the will, and (iii) that the first respondent had lodged police reports on the forgery of the will. The second respondent, who was the tenant of three plots of land bequeathed to the appellants under the will, was not a party in the probate action and did not participate in the instant appeal.

[4] In their statement of defence, the appellants denied that members of the family of the deceased, including the appellants, were informed by the said Tan Kian Teck that the deceased left no will. The appellants further pleaded (i) that the will was a valid will witnessed by witnesses, (ii) that it was within the first respondent's knowledge that the deceased had different signatures, and (iii) that, the police had not taken any action against the appellants on the alleged forgery. And for good measure, the appellants counter-claimed against the first respondent for damages, for the malicious reports lodged by the first respondent against the appellants.

[5] Insofar as the trial court was concerned, "the main and core issue for determination ... was whether the signature (of the deceased) was genuine or forged. In order to succeed in his claim, (the first respondent) had to discharge the burden of proving that the will was a forgery according to the standard of proof". At [10] and [12] of its judgment, the trial court repeated that the core dispute was whether the appellants "falsified the signature of the deceased" as contended by the first respondent or whether "the will was valid" as contended the appellants. The trial court remarked that the first respondent had the "legal and evidential burden of proof", and that the appellants had no "evidential burden" unless "a *prima facie* case (had been) made out on the pleaded cause of action".

[6] Both the first respondent and the appellants summoned handwriting "experts" (PW4 from Singapore for the first respondent, and DW3 from Australia for the appellants) to testify on the impugned signature. PW4 concluded in his report and testified that the will was forged, while DW3 concluded in his report and testified that the impugned signature was that of the deceased. After a detailed analysis and evaluation of the opposing opinions of the "experts" coupled with an assessment of the expertise and experience of the "experts" (see [13], [14], [20] to [26] of the judgment of the trial court), the trial court held that "the expert opinion of DW3 ... was to be preferred to that of PW4", for the following reasons:

(a) The credentials and training of DW3 surpassed that of PW4; the experience of DW3 was wider; the exposure of DW3 in the field of document examination was greater;

(b) DW3 testified that his expert evidence had been accepted by the High Court of Sabah and Sarawak in three civil suits; PW4 merely listed his court appearances without any disclosure on the specifics of his testimony or whether his testimony had been accepted;

(c) In the preparation of his report, PW4 only examined a photocopy of the will; that impaired PW4's examination, a fact that PW4 readily admitted in his report;

(d) PW4's subsequent examination of the original will was conducted in the premises of the court; PW4's subsequent report was a reproduction of the original report, except for the deletion of the admission in [6(c)] above; that raised the question as to whether PW4 "had in fact conducted a proper and thorough comparison of the original will with the specimen signatures or merely a cursory examination of about two and a half hours to confirm the validity of (his earlier) conclusion";

(e) PW4's report was vague and inconclusive; based on inconsistencies in certain features of the impugned signature, PW4 concluded that the impugned signature was not that of the deceased;

(f) DW3 explained how those inconsistencies could have come about:

> the apparent discrepancies of one more stroke used to write the character, as mentioned in the Report of William Pang, could reasonably be attributed to the typical outcomes which are known to result in signatures from the infirmed hands of the elderly: specifically the tendency towards more pen-stops or pen-lifts with clumsy restarting pen-placement, (resulting in the unintended perception of one more line – stroke in certain characters), the poorer line quality, writing-speed and fluency, the difficulty in completing some complex handwriting formations and characteristics, and a greater likelihood or more blunt-line-endings. … I came to the conclusion that due to the numerous observed similarities, there is strong support for the proposition that this questioned signature was signed by the same elderly writer as those Ong Eng Bee specimen signatures.

(g) PW4 "did not sufficiently explained with cogent data how he reconciled the inconsistencies with the similarities found in arriving at the conclusion that the [impugned] signature ... was not written by the [deceased]";

[7] The trial court thus summed up its reasons for its preference of DW3's expert opinion:

> DW3 thoroughly analysed and examined both the similarities and inconsistencies between the original and specimens before he expressed his opinion that the signature was genuine. In my view, he [DW3] supported his conclusion, that the [impugned] signature was signed by [the deceased] who had written the specimens, by cogent data as a result of a comprehensive analysis of the signatures, duly taking into consideration both the similarities and the differences that were observed. In these circumstances, I held that the expert opinion of DW3 was to be preferred to that of PW4.
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> (see [26] of the judgment of the trial court).

> In short, his [DW3] conclusion of genuineness was firm, unequivocal and supported by cogent data based on a comprehensive examination that left little room for doubt. PW4 on the other hand had not done a thorough analysis with the original Will and arrived at findings and conclusions that were weak, inconclusive and unreliable as proof ...
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> (see [29] of the judgment of the trial court).

[8] That core finding aside, the trial court also made the following findings, which were all against or not for the first respondent:

(a) the first respondent pleaded but failed to call Tan Kian Teck to testify as contended;

(b) the first respondent contested the will and alleged that it was invalid on the ground of forgery; but the first respondent should call the witnesses to the will to testify;

(c) the evidence pointed to the fact that before his demise the deceased lived with the second appellant and not with PW5 as contended by the first respondent;

(d) the appellants produced evidence that the deceased gave company shares and lands to other members of the family;

(e) there was a history of enmity and hostility between PW5 and the appellants;

(f) none of the surviving wives or children of the deceased, a total of 11 persons excluding PW5, challenged the will;

[9] Both claim and counterclaim were dismissed by the trial court.

[10] The respondent appealed to the Court of Appeal who did not disturb any finding of fact of the trial court. However, the Court of Appeal disagreed with the trial court on the burden of proof. The Court of Appeal held that the trial court was wrong to impose the burden of proof on the first respondent to prove forgery when the appellants had not proved due execution of the will. At [4] to [6] of its judgment, the Court of Appeal held that the appellants, as propounders of the will, had the burden to prove due execution and the absence of suspicious circumstances surrounding the making of the will. The Court of Appeal referred to *Khaw Cheng Poon & Ors v. Khaw Cheng Bok And Ors & Another Appeal* [2005] 3 CLJ 753, *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19, *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309, *Sarkar on Evidence* 14th edn, vol. 2 at p. 1396, and cited s. 5(1) of the Wills Act 1959 which provides that "no will shall be valid unless it is in writing and executed in manner hereinafter mentioned". The Court of Appeal reasoned that since the appellants did not

call the witnesses to the will to testify in the probate action, "the will was not worth the paper it was written on". The Court of Appeal reversed the decision of the trial court and revoked the probate.

[11] The appellants obtained leave to appeal to this court on the following questions of law:

(i) Whether the probate rule that the burden of proving that the instrument so propounded is the last will and testament of the testator applies in a case where the impugned will has already been admitted into probate and a sealed grant of probate issued by the High Court?; and

(ii) Where the challenge to the impugned will is on grounds of forgery, and specifically that the executor had forged the will, whether the burden lies entirely on the challenger in proving forgery?

[12] For the appellants, it was orally submitted: (i) the Court of Appeal misunderstood the case before it; (ii) it was an action for revocation of the probate and not an action for grant of probate; (iii) the only issue was whether a false will was put forward to obtain probate; (iv) the grant of probate, even in common form, is conclusive as to due execution (learned counsel cited Williams, Mortimer and Sannucks on *Executors, Administrators and Probate* 20th edn at 40-02); and (v) s. 34 of the Probate and Administration Act 1959 should be read together with O. 72 r. 13 of the Rules of Court 2012. For the first respondent, it was orally submitted: (i) rules of probate were not applicable to the case; (ii) when the will was challenged, the onus shifted to the propounders of the will; (iii) the grant of probate was immaterial; and (iv) there was no will in existence.

[13] We agree that "those who propound a will must show that the will of which probate is sought is the will of the testator ... has to prove its due execution and valid execution and if there are any suspicious circumstances ... remove them from the mind of the court ... " (*Sarkar on Evidence* 14th edn, vol. 2 at p. 1396). That is so where probate is being sought. But probate was not sought in the instant case. The will had been propounded. Probate had been granted. After it had been probated, the will was challenged. But yet what was before the trial court was not an action for the grant of probate, but an action for revocation of the probate.

[14] Section 34 of the Probate and Administration Act 1959 (Revised 1972) provides that "any probate or letters of administration may be revoked or amended for any sufficient cause". "… the Probate and Administration Act 1959 has no definition of what is sufficient cause. What constitutes sufficient cause would depend on the circumstances of each case. Section 263 of the Indian Succession Act 1925 provides a useful guide as to what is sufficient cause …" (*The Law of Wills Probate Administration and Succession in Malaysia*

and Singapore by Mahinder Singh Sidhu at 219). But regardless of what actually constitutes sufficient cause, it is implicit that any probate or letters of administration may only be revoked or amended for sufficient cause. Probate or letters of administration may not be revoked or amended without sufficient cause. It should go without saying that unless there is sufficient cause, an action for revocation of probate or letters of administration must fail. But who has the burden to show sufficient cause – applicant or respondent?

[15] In the instant case, the Court of Appeal held (i) that the trial court was wrong to impose the burden of proof on the first respondent to prove forgery when the appellants had not proved due execution of the will, (ii) that the appellants, as propounders of the will, had the burden to prove due execution and the absence of suspicious circumstances surrounding the making of the will, and (iii) that since the appellants had not called the witnesses to the will to testify in the probate action "the will was not worth the paper it was written on". But really, what the Court of Appeal had actually done, in those latter rulings, was to treat the instant probate action as if it was an action for the grant of probate, that evident by the Court of Appeal's reliance on *Khaw Cheng Poon & Ors v. Khaw Cheng Bok & Ors* and *Gan Yook Chin v. Lee Ing Chin* which were contentious probate proceedings where probate was being sought, when in fact and in law it was not. As said, the will had been propounded and probate had been granted. The instant probate action was for revocation of the probate. The over-arching matter of inquiry was whether there was sufficient cause for revocation of the probate. But that, with respect, was not appreciated by the Court of Appeal who held that the burden and initial onus of proof lay with the appellants, notwithstanding the fact that the first respondent was the pursuer who brought the instant probate action for revocation of the probate.

[16] The startling effect of that latter ruling by the Court of Appeal is that a person who seeks revocation of the probate has no burden or initial onus to prove sufficient cause. The will might have been probated. But the stand of the Court of Appeal was that in an action for revocation of the probate, a respondent has the burden to prove the probated will all over again, while an applicant has no burden or initial onus to prove sufficient cause. To say the least, we were completely taken aback by that stand of the Court of Appeal. For it has been settled by a long line of authorities that the person who seeks revocation of the probate or letters of administration has the burden to prove sufficient cause.

[17] *In The Estate Of Syed Abdullah Abdulrahman Sahil, Deceased* [1939] 1 LNS 34; [1939] MLJ 179, *Canagasaby v. Saravenamuttoo Vytilingam* [1917] 2 FMSLR 185, and *Fazil Rahman & Ors v. AR S Nachiappa Chettiar* [1960] 1 LNS 26; [1963] MLJ 309 did not expressly say so. But in *Palaniyappan*

v. Ramanathan Chettiar [1976] 1 LNS 137; [1977] 2 MLJ 34, Abdul Hamid J, as he then was, categorically stated that the applicant has the onus to establish sufficient cause:

> Before I finally state my finding, it may be useful to refer to the law affecting application for revocation of probate. It is settled law that the court may revoke any probate if it is satisfied that there is sufficient cause to do so (section 34 of the Ordinance). The onus, I think, is on the applicant to establish that there is sufficient cause for the revocation. What constitutes sufficient cause would, to my mind, depend upon the circumstances of each particular case.

[18] In *Re Khoo Boo Gong deceased* [1981] 1 LNS 78; [1981] 2 MLJ 68, Chang Min Tat FJ, delivering the judgment of the court, also openly stated that the applicant has the onus to make out sufficient cause for revocation of the probate:

> In our view, therefore and with respect, we do not think that the respondents have made out a case for the revocation of the probate granted to the appellant. No sufficient cause has been shown by the respondents. The appeal must be allowed.

[19] And in the following cases, *Ligar Fernandez v. Eric Claude Cooke* [2002] 6 CLJ 152; [2002] 5 MLJ 177, and *Tan Khay Seng v. Tan Kay Choon & Anor* [1988] 1 LNS 233; [1990] 1 MLJ 51, the action for revocation of the probate or letters of administration was dismissed by reason of the applicant's failure to establish sufficient cause.

[20] It is clear that the person who seeks revocation of the probate has the burden and initial onus to prove sufficient cause. In Victoria, Australia, where sufficient cause is not specified in the equipollent provision, the court requires the applicant to show a *prima facie* case (see for example, *Norman Raitman v. Re Watson* [2017] VSC 322, *Gardiner v. Hughes* [2017] VSCA 167), *Carlisle v. Wills* [1963] VR 583, *Re The Will of Littlewood (dec'd)* - BC9406289 Supreme Court of Victoria, *Hill v. Rowan* - BC201704654 Supreme Court of Victoria). But whether labelled sufficient cause or *prima facie* case, the person who seeks revocation of the probate has the burden and initial onus of proof. In our jurisdiction, the person who seeks revocation of the probate has the burden and initial onus to establish sufficient cause. It was not as the Court of Appeal had it, that the first respondent had no burden and initial onus to establish sufficient cause. The trial court was absolutely right that the first respondent had the "legal and evidential burden of proof", and that the appellants had no "evidential burden" unless "a *prima facie* case (had been) made out on the pleaded cause of action".

[21] In the instant case, forgery was pleaded as the sufficient cause. Due execution was not in issue. The trial court held that forgery was not established. The Court of Appeal did not disturb the finding that forgery was

not proved. Since sufficient cause was not established, the Court of Appeal could not revoke the probate. But before we put that right, we would answer the leave questions in the following terms:

> Leave question 1: Whether the probate rule that the burden of proving that the instrument so propounded is the last will and testament of the testator applies in a case where the impugned will has already been admitted into probate and a sealed grant of probate issued by the High Court?
>
> Answer: "Those who propound a will must show that the will of which probate is sought is the will of the testator ... has to prove its due execution and valid execution and if there are any suspicious circumstances ... remove them from the mind of the court ..." But where a will has been admitted to probate, the person who seeks revocation of the probate has to establish sufficient cause.
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> Question 2: Where the challenge to the impugned will is on grounds of forgery, and specifically that the executor had forged the will, whether the burden lies entirely on the challenger in proving forgery?
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> Answer: Where the will has been admitted to probate, the person who seeks revocation of the probate on the ground of forgery has the burden and initial onus to prove forgery. Where the will has not been admitted to probate, it would appear from all cases decided that both propounder and challenger could not be absolutely freed from the burden and or onus of proof.

[22] Those were the reasons why we unanimously allowed the appeal with costs, and restored the order of the trial court.